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# **MOST COMMON MISTAKES IN CALIFORNIA ASSET PROTECTION**



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probate, trusts, estates

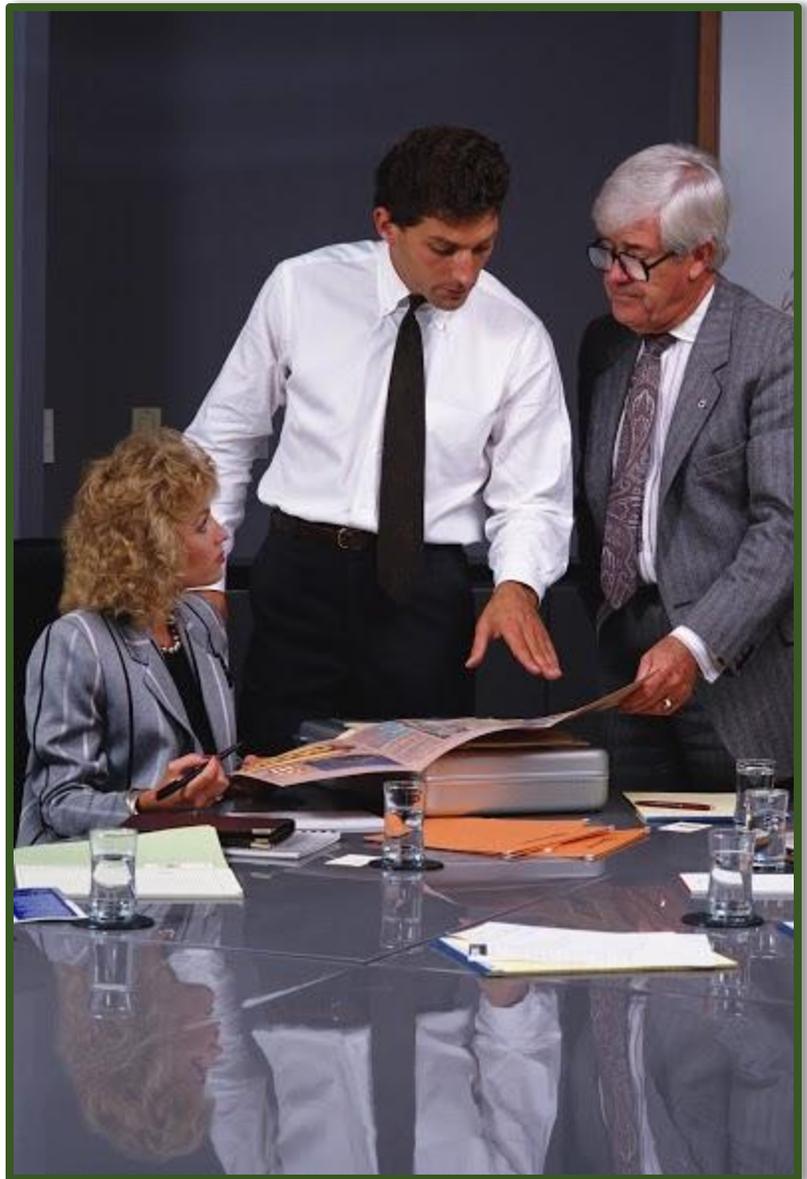


Asset protection is an important part of general estate planning. Being able to properly shield your assets from creditors is crucial in preserving your estate for your family. Creditors include, not only bill collectors, but anyone who obtains a legal judgment against you, such as with lawsuits.

Asset protection can be tricky, though. Here are a few of the most common mistakes that people make when they attempt to protect their assets. Seeking the advice of an estate planning attorney can help you avoid these mistakes.

## Seeking Counsel Too Late

It is most likely too late to protect your assets once a claim has been made by a creditor. The reason is that, any transfers of assets made with the intent to delay or defraud a creditor will be considered a “fraudulent transfer” and reversed by the court. Even if the transfer was not made with that intent, depending on the circumstances, it may difficult to prove otherwise. In fact, in some states, if an asset transfer occurs after a lawsuit has been filed, that transfer is automatically ruled fraudulent. However, even asset transfers made before the lawsuit is actually filed, can be seen as fraudulent, if the acts being complained of, occurred before the transfer was made. It is very important to engage in asset protection as early as possible, to avoid these complications.



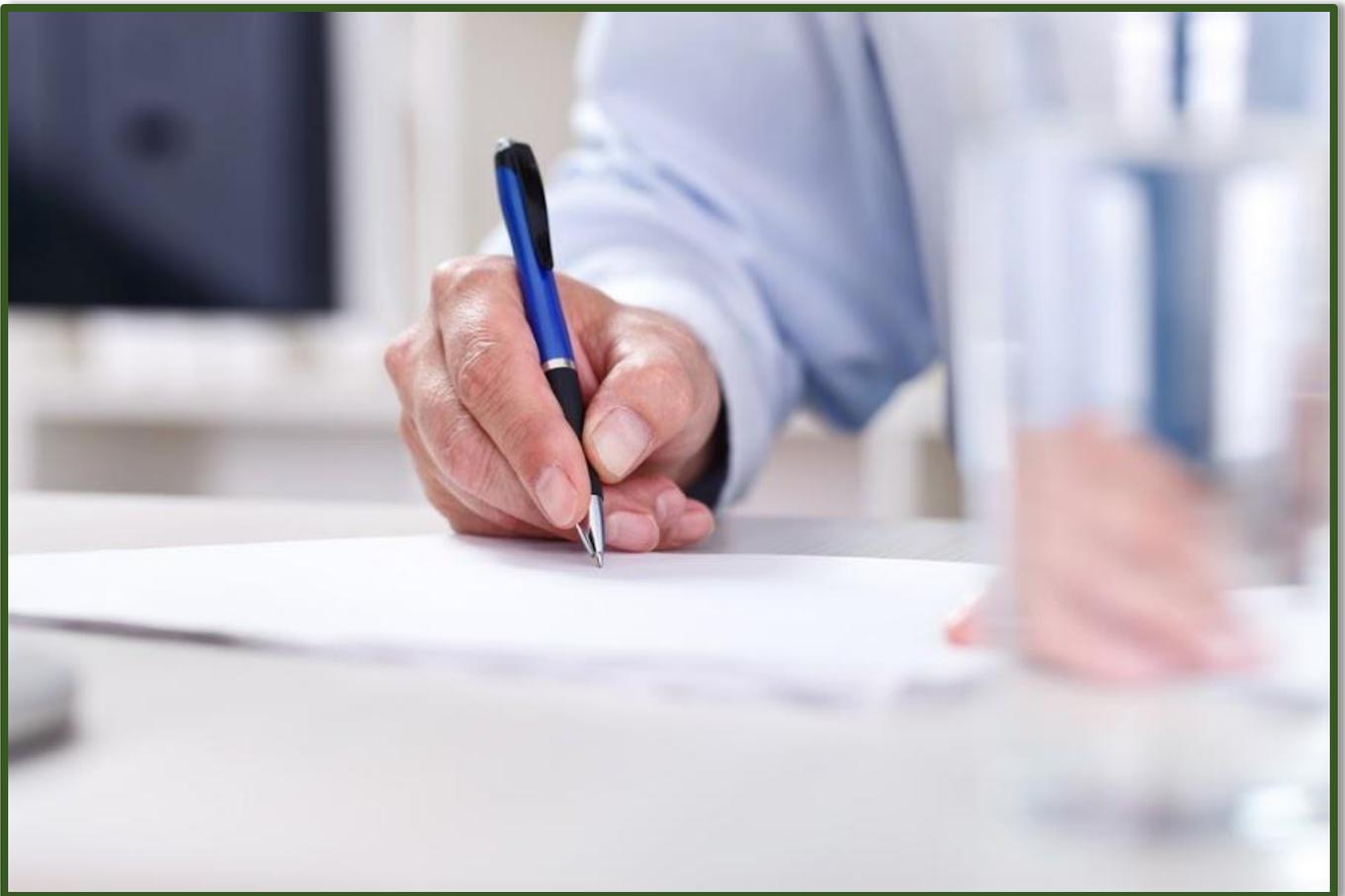
## Hiring an Inexperienced Attorney

The unfortunate reality is, not all attorneys have the expertise to properly handle asset protection planning. Just as you wouldn't go to your family doctor to perform heart surgery, you need to seek the advice of an experienced estate planning attorney with expertise in asset protection. This area of the law requires a unique understanding of several legal disciplines, including trusts, property, domestic bankruptcy and debtor-creditor issues, among many others.



## Protecting Too Many Assets

You may wonder, how can you protect **too many** assets? Well, the issue once again is the appearance of fraudulent transfers. When an individual takes steps to protect all of his assets, courts often see that as extrinsic evidence of the intent to hide assets from creditors. Obviously, individuals who purposefully hide their assets from creditors, will not readily admit to doing so. This leaves the courts with the job of determining, from the circumstances, whether that intent exists. The best thing to do is be satisfied with obtaining a reasonable level of asset protection. This notion is referred to as "nest egg" planning.



## Overlooking Life Insurance and Annuities

Life insurance and annuities are two of a very limited group of investments that are usually protected against creditor claims. The public policy underlying this principle is based on the notion that life insurance and annuities are necessary for the debtor and his or her family to maintain at least a minimum level of financial security, so they do not become reliant on public assistance. For this reason, it is a good idea to assess your estate and determine whether life insurance and annuities need to be included in your financial portfolio.



## Neglecting to Update Your Plan

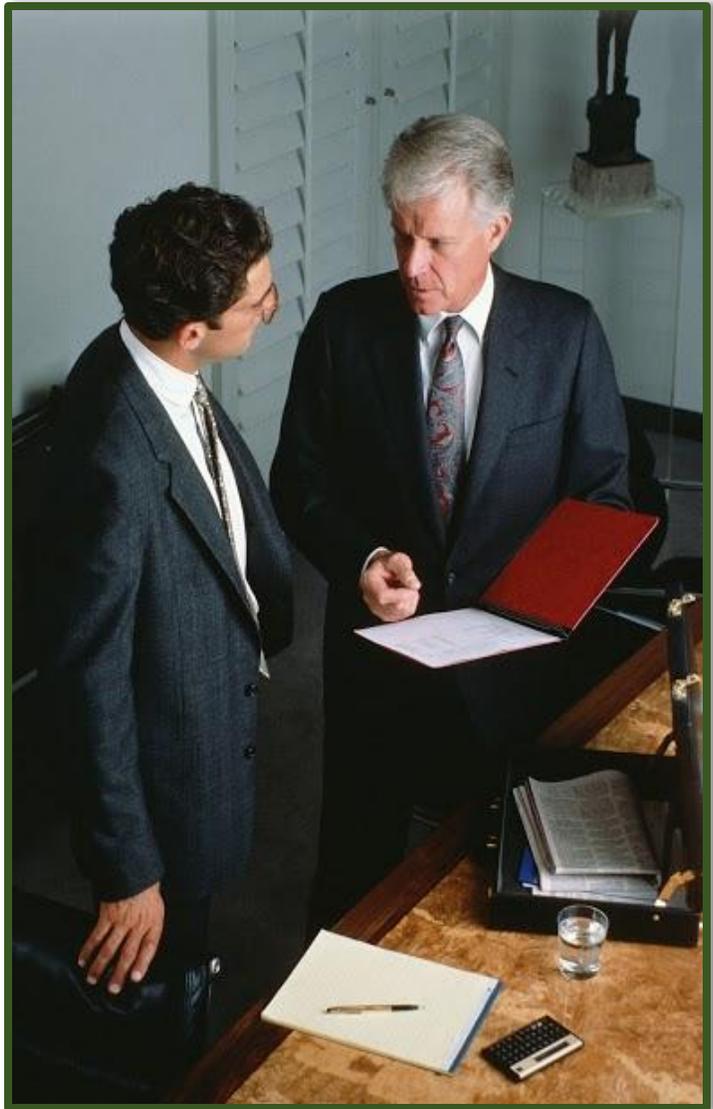
The laws and regulations that govern or affect asset protection strategies are subject to change each year. This makes asset protection a fluid process. Furthermore, each client's personal circumstances are subject to change as well, over time, which can make provisions in an asset protection plan outdated or obsolete. In order to keep appropriate protections in place, it is crucial that you review your asset protection plan on a regular basis, while discussing any new legal developments with your estate planning attorney.



## Retaining Too Much Control

It is natural to seek to maintain control of your own wealth and assets. This natural desire does not disappear simply because you put an asset protection plan in place. However, it is inherent in asset protection planning that an inverse relationship between the amount of control retained and the level of protection afforded. In other words, the more control you retain over property, the easier time a creditor will have accessing that property. For instance, a revocable living trust, which allows you to retain control, provides no asset protection precisely because it is revocable. Therefore, it is important that you resign as trustee to any existing trusts, in favor of an independent third-party.

If you have questions regarding asset protection, or any other business or estate planning needs, please contact the Schomer Law Group either [online](#) or by calling us at (301) 337-7696.



## About the Author



Scott P. Schomer is a graduate of Boston University School of Law and is a frequent lecturer on estate planning and elder law issues, having appeared on local and national television discussing the importance of estate planning. Scott has an extensive litigation background and has over the years obtained in excess of twenty five million dollars in judgments and verdicts for his clients. Scott is a member of the Probate Volunteer Panel and has been appointed by the Los Angeles Superior Court to represent numerous parties in contested proceedings in the probate court. Scott has also served as Judge Pro Tempore of the Los Angeles Municipal Court and also been appointed by the court as an expert in probate matters. Because of his extensive experience, Scott brings a unique perspective to helping protect his clients.

### **SCHOMER LAW GROUP**

Schomer Law Group is a professional law corporation that specializes in elder law, probate, wills, trusts and conservatorships. We counsel clients on the unique legal issues relating to advancing age. Whenever possible, we prefer to help clients plan for the future, avoid probate, minimize taxes and solidify their legacy. We also help clients plan for possible incapacity and long-term care. We help our clients deal with issues of aging with independence and dignity. In addition to estate planning, our firm has considerable experience helping victims of elder abuse. Our firm has aggressively pursued remedies and recovered assets belonging to our elderly clients where unscrupulous individuals have taken advantage of the elderly because of diminished capacity or other impairments.

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